

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

In re:

KIMBALL HILL, INC.,

Debtor.

SMS FINANCIAL J, LLC,

Plaintiff,

v.

Case No. 2:18-mc-19-FtM-29NPM

CUSTOM PLUMBING OF LEE
COUNTY, INC.,

Defendant.

ORDER

Before the Court is SMS Financial J, LLC's ("SMS Financial") Motion to Compel Deposition (Doc. 15). SMS Financial seeks to take the deposition in aid of execution of Defendant Custom Plumbing of Lee County, Inc. ("Custom Plumbing") (Doc. 15, p. 1). No response was filed and the time to respond has lapsed.

On October 23, 2019, SMS Financial registered a judgment from the United States Bankruptcy Court in the Northern District of Illinois in favor of it and against Custom Plumbing in the principal amount of \$107,040.98. (*Id.*; Doc. 1-1, p. 1). SMS Financial scheduled the deposition of John Myers, President and Director of Custom

Plumbing on September 11, 2020. (Doc. 15, p. 1). Mr. Myers failed to appear. (*Id.*, pp. 1-2, 4). SMS Financial now seeks to compel Mr. Myers as President and Director of Custom Plumbing to appear for a deposition in aid of execution by Zoom videoconferencing.

Rule 69 governs the scope of discovery a judgment creditor may obtain in aid of execution. Under Rule 69, “the judgment creditor . . . may obtain discovery from any person—including the judgment debtor—as provided in these rules or by the procedure of the state where the court is located.” Fed. R. Civ. P. 69(a)(2). The purpose of this discovery is to learn of the existence of a judgment debtor’s assets, and the scope of this post-judgment discovery is broad. *United States v. S. Capital Constr., Inc.*, No. 8:16-CV-705-T-24JSS, 2018 WL 7017412, *1 (M.D. Fla. Sept. 24, 2018).¹ The Court finds SMS Financial is entitled to depose John Myers in his capacity as President and Director for Custom Plumbing.

Accordingly, the Motion to Compel Deposition (Doc. 15) is granted. SMS Financial will serve an amended notice of taking deposition deuces tecum² and zoom login information on Mr. Myers. If Mr. Myers fails to appear, upon motion, the Court will consider sanctions including contempt of court. The Clerk of Court is

¹ The Court notes SMS Financial may move under Florida Rule of Civil Procedure 1.560(b) to request Custom Plumbing complete form 1.977(b).

² The Court notes that document requests 44 and 46 are facially overbroad or inapplicable and should be omitted.

directed to send a copy of this Order to John Myers, President and Director, Custom Plumbing of Lee County, Inc., 4440 Williamson Road, Fort Myers, FL 33905. SMS Financial will also include this Order when serving its amended notice of taking deposition duces tecum.

DONE and **ORDERED** in Fort Myers, Florida on December 4, 2020.



NICHOLAS P. MIZELL
UNITED STATES MAGISTRATE JUDGE